

### **Declaration of Michael Holley**

1. My name is Michael Holley. This Declaration is based upon my personal knowledge.
  2. Tom Zarro and I are the Managers of Next Gen Beverages, LLC, a Wyoming limited liability company (“Next Gen”).
  3. Next Gen was formed as a Wyoming limited liability company on June 14, 2023.
  4. Next Gen was served on July 30, 2024 by service on its statutory agent. The statutory agent sent me the Answer, Counterclaims and Third-Party Claims (“Pleading”) on August 2, 2024.
  5. When I received the Pleading, I assumed that Paul Levine, the attorney for Labor Smart, Inc., had previously accepted service of the Pleading on behalf of Next Gen. As a result, I did not take any further action with respect to the Pleading and did not notify Mr. Levine.
  6. On August 22, 2024, I was made aware of the Application for Entry of Default filed against Next Gen. I immediately contacted Mr. Levine and discovered that I was mistaken about him accepting service on behalf of Next Gen. I did not intend to delay this matter, and I did not intend to take advantage of the Tuckers or interfere with any judicial decision-making or manipulate the legal process. I honestly thought Mr. Levine would be filing a timely Answer on behalf of Next Gen.
  7. The Tuckers allege Next Gen has:  
  
been instrumental and has substantially participated and encouraged Takeover, LTNC, Holley, McBride, and Pavlik to commit multiple wrongdoings, including but not limited to: a) controvert the liabilities owed by Takeover to Tucker (and 2 others) by simply ‘shutting down’ that business and opening Next Gen in its stead; b) commit various breaches of fiduciary duties owed to Tucker; c) avoid payments owed/due to Tucker and/or his business entity; d) interfere with Tucker’s voting and financial rights in Takeover and LTNC; and e) interfere with the Tuckers’ shares/ability to sell shares of LTNC stock.
- (Pleading, ¶ 111.)
8. Next Gen denies this allegation. Whatever action was taken by Takeover, LTNC, Holley, McBride or Pavlik, they did on their own, without any participation or encouragement from Next Gen. To the best of my belief and knowledge, Takeover and

LTNC took proper corporate action with respect to the Tuckers. To the best of Next Gen's knowledge, all action taken by Takeover, LTNC, myself, McBride or Pavlik was proper and with the advice of legal counsel.

9. Since Next Gen only came into existence on June 14, 2023, it could not have taken any action prior to that date.

10. Next Gen has not had any communication with Mr. McBride since it was incorporated on June 14, 2023.

12. Next Gen became aware that Mr. Tucker was removed as an Officer and Director of Takeover in January 2023. As of June 14, 2023, Next Gen did not believe Takeover, Labor Smart, myself, Mr. McBride or Mr. Pavlik owed any fiduciary duties to Mr. Tucker.

13. On May 2, 2023, Mrs. Tucker made a public statement on social media (Twitter) that the Tuckers were taking over the Takeover product line called "Gamershots". From that date, Next Gen did not believe Mr. or Mrs. Tucker were associated with Takeover.

14. As of March 2023, the Takeover Board of Directors consisted of myself, Mr. McBride and Mr. Pavlik.

15. On November 7, 2022, Mr. Tucker was suspended from all positions he held with Takeover for 30 days, and his authority to act on behalf of Takeover was revoked. He was given notice the same day.

16. As of November 7, 2022, Mr. Tucker had no authority to act, or take any action, on behalf of Takeover.

17. As of March 2023, Takeover was the owner of Trademarks Registered with the United States Patent and Trademark Office, namely: (1) NXT LVL; (2) NXT LVL GAMER SHOT; (3) NXT LVL HYDROGEN WATER; (4) NXT LVL SPORTS; (5) NXT LVL THERAPY; (6) NXT LVL UP; and (7) NXT LVL UP GAMER SHOT.

18. On May 25, 2022, Mr. Tucker, purportedly on behalf of Takeover, and James Deppoleto, executed a Convertible Note Purchase Agreement. On July 6, 2022, Mr. Tucker, purportedly on behalf of Takeover, and Mr. Deppoleto, executed the First Amendment to Convertible Note Purchase Agreement. On August 19, 2022, Mr. Tucker, purportedly on behalf of Takeover, and Mr. Deppoleto, executed the Second Amendment to Convertible Note Purchase Agreement. The total amount of loans made by Mr. Deppoleto to Takeover was \$2,015,698.48, all due and payable November 1, 2022. Mr. Tucker was the only Takeover Board member or Officer that had any communications with Mr. Deppoleto regarding the loans.

19. It is believed that when Mr. Tucker was discussing and negotiating the loans from Mr. Deppoleto, he was represented by Veronica Manolio, who is the Tuckers' current attorney.
20. It is believed that when Mr. Tucker and Mr. Deppoleto negotiated the loans, both, and especially Mr. Tucker, knew that Takeover would not be able to pay the total loan amount on its due date: November 21, 2022.
21. It is believed that at the same time Mr. Deppoleto was making the loans to Takeover, Mr. Tucker and Mr. Deppoleto were falsely claiming that Mr. Deppoleto was a member of the Takeover Board of Directors.
22. On November 8, 2022, Mr. Deppoleto declared a default and demanded full payment of all amounts loaned to Takeover.
23. Beginning in approximately September 2022, Mr. Tucker and Mr. Deppoleto began surreptitiously negotiating with 5 Hour Energy. It is believed that Mr. Tucker and Mr. Deppoleto proposed that a new company (Newco Company) enter into a partnership with 5 Hour Energy to support Newco's "Gamershots, T – Pain's NXT LVL Gamershots, and future 2023 products to include T – Pains NXT LVL Gamer Energy Drink".
24. All of the reviews, images, photos, displays and "Current Partnership Discussions" used in the Proposal to 5 Hour Energy were owned and controlled by Takeover.
25. Any fiduciary duties allegedly owed by myself, McBride or Pavlik to Mr. Tucker expired long before Next Gen was formed.

I declare under penalty of perjury that the foregoing is true and correct.

**Dated** this 30<sup>th</sup> day of August, 2024.

/s/ Michael Holley

Michael Holley